

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LARRY CAIN,	:	
Petitioner,	:	No. 4:05-CV-0354
	:	
v.	:	(McClure, J.)
	:	(Smyser, M.J.)
ATTORNEY GENERAL OF THE	:	
STATE OF PENNSYLVANIA,	:	
Respondent.	:	

ORDER

May 27, 2005

BACKGROUND:

Now before the court is the report and recommendation of Magistrate Judge Smyser in the above-captioned case. The Magistrate Judge recommends dismissing petitioner's petition for writ of habeas corpus under 28 U.S.C. § 2254 as untimely. Petitioner failed to file any objections to the report and recommendation. We therefore need only review the record for clear error before accepting the magistrate judge's report and recommendation. Mitchell v. Department of Corrections, 272 F. Supp. 2d 464, 466 (M.D. Pa. 2003). Finding no clear error, we accept the report and recommendation as the holding of this court. See 28 U.S.C. § 636(b); Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987).

NOW, THEREFORE, IT IS ORDERED THAT:

1. The report and recommendation of Magistrate Judge Smyser (Rec. Doc. No. 14) is adopted as the holding of this court.
2. The petition for a writ of habeas corpus is dismissed as untimely, pursuant to 28 U.S.C. § 2244(d)(1).
3. The clerk is directed to close the case file.
4. There is no basis for a certificate of appealability.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge